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<p align="center"><b>MIC3 Advisory Opinion</b>  <b>Issued by:</b>  <b>Executive Director: BG(R) Stephen R. Hogan</b>  <b>General Counsel: Richard L Masters</b></p>		
<b>State Requesting Opinion: Ohio</b>	<b>Dated:</b> <b>August 29, 2014</b>	
<b>Description:</b>  <b>Whether the Interstate Compact on Educational Opportunity for Military Children is applicable to children of a military member who is not on active duty, as defined by Title 10 of the U.S. Code.</b>		

**Background:**

Pursuant to Article X, Section C. of the Interstate Compact on Educational Opportunity for Military Children (hereinafter ‘Compact’) the State of Ohio has submitted a request for an advisory opinion concerning clarification of an issue pertaining to the Compact.

**Issue:**

The Commissioner from Ohio would like further guidance from the Military Interstate Children’s Compact Commission concerning whether the provisions of the Compact must be applied to children of a member of the military who is not on active duty as defined by Title 10 of the U.S. Code.


**Applicable Compact Provisions or Rules:**

Article III, Section A. 1. of the Compact provides:

“Except as otherwise provided in Section B., this compact shall apply to the children of:

1. Active duty members of the uniformed services as defined in this compact, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Section 1209 and 1211;”

Article II, Section A. of the Compact states that:


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“Active duty” means: full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C., Section 1209 and 1211.”

### **Review and Analysis**

The Commissioner for Ohio seeks guidance from the Executive Committee of the Interstate Commission on Educational Opportunity for Military Children (‘MIC3’) concerning a request by the family of a military member who is admittedly not on active duty, but rather holds the position of Air Reserve Technician (“ART”) at Wright-Patterson Air Force Base in Dayton Ohio. This position is classified as ‘civilian’ employment in which the employee must hold dual status as a civil service employee and maintain status as a reservist in the Air Force Reserve unit where he is employed. Such assignments are not classified as “active duty” status governed by **Title 10** of the U.S. Code, but are instead classified as ‘state status’ members of the National Guard under **Title 32 U.S.C. §325 et seq.** Although acknowledging that the military member in question is not on active duty, the family insists that the Compact should be applied to them and that the failure to do so is unfair discrimination and that the Compact statute has been misinterpreted by both the Ohio Commissioner and the MIC3 national office.

Article II, Section A. of the Compact unequivocally defines ‘active duty’ as “full time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders under 10 U.S.C., Section 1209 and Section 1211.” Moreover Article III, Section A.1. of the Compact, in equally unambiguous terms, provides that the provisions of the compact are applicable to “active duty members of the uniformed services as defined in this compact . . .”

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Because the military member in question is not currently classified as having the status of an *"active duty member of the uniformed service of the United States"* the Compact clearly does not apply.

The intent of these compact provisions can clearly be determined from the plain meaning of the language used to limit the applicability of the compact to “active duty” members of the military, not civilian employees or ‘state status’ members of the National Guard. As the U.S. Supreme Court recently reaffirmed, “Applying ‘settled principles of statutory construction,’ we must first determine whether the statutory text is plain and unambiguous and . . . [i]f it is, we must apply the statute according to its terms.” *Carciere v. Salazar*, 555 U.S. ----, ----, 129 S.Ct. 1058, 1063-1064, 172 L.Ed.2d 791 (2009); See also *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253-254 (1992).

### **Conclusion**

In sum, by its explicit terms the provisions of the Compact are not applicable to children of a member of the military who is not on active duty as defined by **Title 10** of the U.S. Code. (See Compact Art. II, Section A and Art. III, Section A. 1.).